The opinion in support of the decision being entered today was *not* written
for publication and is *not* binding precedent of the Board.
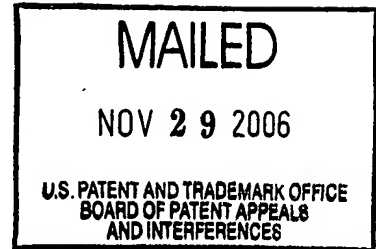
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte Nicolas Sauriol and Alex Sauriol

Appeal No. 2006-3091
Application No. 10/029,855
Technology Center 2100

ON BRIEF

Before THOMAS, JERRY SMITH, AND DIXON, *Administrative Patent Judges.*

DIXON, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final

rejection of claims 1-24, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The Appellants' invention relates to a system and method for a network configuration engine. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

> 1. A system for configuring networks, comprising:
>
> at least one network element database, the at least one network element database storing abstracted interface data regarding at least one network element; and
>
> a processor, communicating with the at least one network element database, the processor operable to: (1) abstract the interface data regarding the at least one network element, and (2) configure a network using the abstracted interface data stored in the at least one network element database.

PRIOR ART

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

Henderson et al. (Henderson)	6,259,679	Jul. 10, 2001
Kekic et al. (Kekic)	6,788,315	Sep. 7, 2004 (filed Nov. 17, 1997)

REJECTIONS

Claims 1-20, 23, and 24 are rejected under 35 U.S.C. § 102 as being anticipated by Kekic. Claims 21 and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kekic further in view of Henderson.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and the Appellants regarding the above-noted rejections, we make reference to the Examiner's answer (mailed May 5, 2006) for the reasoning in support of the rejections, and to

Appellants' brief (filed Feb. 23, 2006) and reply brief (filed Jul. 5, 2006) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to Appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by Appellants and the Examiner. As a consequence of our review, we make the determinations that follow.

At the outset, we note that the examiner has rejected independent claims 1 and 11 under 35 U.S.C. § 102, and we will limit our review to only anticipation with respect to these claims. We make no findings concerning obviousness of the claimed subject matter.

35 U.S.C. § 102

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it." While all elements of the claimed invention must appear in a single reference, additional references may be used to interpret the anticipating reference and to shed light on its meaning, particularly to those skilled in the art at the relevant time. See Studiengesellschaft Kohle m.b.H. v. Dart Indus., Inc., 726 F.2d 724, 726-727, 220 USPQ 841, 842-843 (Fed. Cir. 1984).

We must point out, however, that anticipation under 35 U.S.C. § 102 is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of a claimed invention. See RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

Appellants argue that Kekic does not teach any feature or functionality that "abstract[s] interface data regarding at least one network element" (Br. 8 and Reply Br. 3). The Examiner maintains that the element manager of Kekic forms an abstract representation and that Kekic teaches that the system will build an element manager by abstracting the data (Answer 9). Appellants argue that the claims require that the processor affirmatively abstract the interface data (Br. 8). We agree with Appellants and find that Kekic merely states that an "[e]lement manager 800 is an abstract representation of the managed computer network element" (Kekic at col. 26, ll.45-47). From our review of those sections of Kekic identified by the Examiner, we find no clear teaching that Kekic "abstract[s] interface data regarding at least one network element" as recited in independent claims 1 and 11.

In response to the Examiner maintaining that it would be impossible in Kekic to store abstracted data without creating or abstracting the data in some affirmative step, Appellants maintain that this does not necessarily mean that the systems and methods of Kekic perform the specific function of abstracting the interface data regarding at least one network element as required by the independent claims. We agree with Appellants, and find that the Examiner has not shown why Kekic would have necessarily abstracted interface data regarding at least one network element. While the Examiner may postulate that it would have been obvious to one skilled in the art at the time of the invention that Kekic would have abstracted interface data regarding at least one network element as an efficient embodiment, the Examiner has not set forth a rejection under obviousness.

Additionally, we note that neither the Examiner nor Appellants have identified a definition of "abstracting" as used in the instant claim language. We therefore have used the ordinary and customary meaning of the term.

From our review of the portions of Kekic cited by the examiner in the responsive arguments at pages 7-9 of the answer, we cannot agree with the Examiner that "[f]rom the described functionality, *Kekic* clearly teaches the affirmative step of abstracting both hardware and software interfaces" (Answer at 9). While Kekic does use abstract representations, we cannot agree with the Examiner that this teaches or inherently requires "abstracting interface data regarding at least one network" as recited in the independent claims. Therefore, the Examiner's argument/position is not persuasive with respect to anticipation. We find that the Examiner has not set forth a prima facie case of anticipation, and we cannot sustain the rejection of independent claim 1 and its dependent claims.
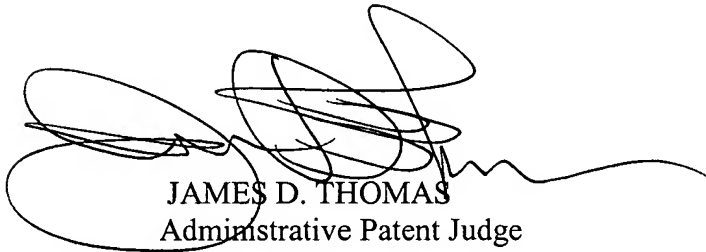
Similarly, we cannot sustain the rejection of independent claim 11 and its dependent claims for the same reasons.

With respect to the rejection of claims 21 and 22 under 35 U.S.C. § 103 in view of Henderson, we do not find that the Examiner has identified how Henderson remedies the noted deficiency in Kekic. Therefore, we find that the Examiner has not set forth a prima facie case of obviousness since the combination does not teach or suggest all of the recited elements. Therefore, we cannot sustain the rejection of dependent claims 21 and 22.
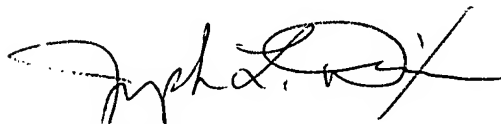
CONCLUSION

To summarize, the rejection of claims 1-20, 23, and 24 under 35 U.S.C. § 102 is reversed, and the rejection of claims 21 and 22 under 35 U.S.C. § 103 is reversed.

REVERSED

JAMES D. THOMAS
Administrative Patent Judge

JERRY SMITH
Administrative Patent Judge

JOSEPH L. DIXON
Administrative Patent Judge

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Scott D. Balderston, Esq.
Hunton & Williams
Intellectual Property Department
1900 K Street, N.W., Suite 1200
Washington, DC 20006